

LEGAL ALERT

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New Foreign Exchange Management Circular issued for Foreign Direct Investment into Vietnam

The State Bank of Vietnam has issued Circular 06/2019/TT-NHNN dated 26 June 2019 (“Circular 06”) to replace the existing Circular No. 19/2014/TT-NHNN dated 11 August 2014 (“Circular 19”). Circular 06 came into effect on 6 September 2019. Below are noteworthy contents of Circular 06.

1. Redefining foreign direct investment (FDI) enterprises:

Under Circular 19, FDI enterprises are enterprises in which foreign investors participate by contributing capital to establish, manage such enterprises and conduct investment activities in Vietnam.

Circular 06 revises the definition of FDI enterprises to specifically include:

- enterprises in which there is at least one foreign investor being a member or a shareholder, and that foreign investor is granted an investment registration certificate;
- enterprises other than those mentioned in item (a) above having one or more foreign investors that hold 51% or more of the charter capital of the enterprises, either by way of (i) capital contribution, acquisition of shares/shares of capital contribution, (ii) division, separation, merger, consolidation, or (iii) new establishment under specialised laws; and
- project enterprises established by foreign investors to implement public private partnership (“PPP”) projects.

2. Clarifying requirement to open Direct Investment Capital Account (“DICA”)

Under Circular 19, the entities obligated to open a DICA include FDI enterprises and foreign investors participating in a business cooperation contract.

Under Circular 06, other than the two types of entities mentioned above, foreign investors directly implementing PPP projects without establishing project enterprises will also have to open a DICA.

3. Clarifying M&A payment transactions that need to be conducted through a DICA

Circular 06 clarifies this point as follows:

The payments of transfer prices of shares/shares of capital contribution in the enterprises mentioned in Item 1(b) above must:

- be conducted through a DICA, if it is between resident and non-resident investors; or
- not be conducted through a DICA, if it is between non-resident investors or between resident investors.

4. Transitional requirement to open DICA

No later than 5 September 2020, the enterprises mentioned in Item 1(b) above which have foreign investors holding 51% or more of the charter capital of the enterprises invested by way of capital contribution, acquisition of shares/shares of capital contribution through indirect investment capital accounts, must open a DICA.

Circular 06 is expected to clear up confusions created by Circular 19 due to inconsistencies with the Law on Investment 2014.

If you have any questions or require further information, please contact [Phuc Nguyen](#) of ZICO Law (Vietnam) Ltd.

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